# MONTANA LEGISLATIVE HISTORY

Chapter 446 1983

Bill H _____ S SB 370 Original bill & history ✓ C

| H. Committee on Natural Resources | | | S. Committee on Agri, Live, & Irr | | |
|---|---|---|---|---|---|
| Hearing Date(s) | 3/11 | C | Hearing Date(s) | 2/18 | C |
| | 3/19 | C | | 2/18 | C |
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| Date Out | | C | | | |

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 364 -- NORMAN -- TO CLARIFY THAT THE COUNTY COMMISSIONERS OF A COUNTY MAY EMPLOY AN ATTORNEY TO PERFORM ANY LEGAL SERVICE IN CONNECTION WITH THE CIVIL BUSINESS OF THE COUNTY WITHOUT THE CONSENT OR INVOLVEMENT OF THE COUNTY ATTORNEY ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/05/83
HEARING: 2/10/83
REPORT: 02/17/83, DO NOT PASS. REPORT ADOPTED.
BILL KILLED.

SB 365 -- GOODOVER -- TO GENERALLY REALLOCATE COAL SEVERANCE TAX MONEY; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON TAXATION: 02/05/83
DIED IN COMMITTEE

SB 366 -- CRIPPEN, FABREGA, NORMAN, ET AL. -- REQUIRING AN OWNER OF MORE THAN ONE MOTOR VEHICLE TO CARRY UNINSURED MOTORIST COVERAGE ON EACH VEHICLE OWNED AND OCCUPIED BEFORE BEING ELIGIBLE FOR UNINSURED MOTORIST BENEFITS ARISING OUT OF ACCIDENTS INVOLVING SUCH MOTOR VEHICLES ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/05/83
HEARING: 2/10/83
DIED IN COMMITTEE

SB 367 -- MARBUT -- TO REVISE THE METHOD FOR FUNDING LOCAL PUBLIC LIBRARIES; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/05/83
HEARING: 2/8/83
DIED IN COMMITTEE

SB 368 -- LEE, KOLSTAD, SWITZER, ET AL. -- TO CLARIFY THAT THE MONTANA ENVIRONMENTAL POLICY ACT DOES NOT EXPAND AGENCY DECISIONMAKING AUTHORITY OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/05/83
HEARING: 2/11/83
REPORT: 02/18/83, DO PASS, AS AMENDED
2ND READING: 02/21/83, DO PASS AYES: 17; NAYS: 32. FAILED.
2ND READING: 2/21/83 BE INDEFINITELY POSTPONED AYES: 34; NAYS: 15
BILL KILLED.

SB 369 -- GRAHAM, HOLLIDAY -- TO DELETE THE REQUIREMENT THAT ADDITIONAL STRIP- AND UNDERGROUND-MINING PERMITS MAY NOT BE ISSUED TO AN OPERATOR WHO HAS REPEATEDLY VIOLATED STATE RECLAMATION LAWS ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/05/83
HEARING: 02/11/83
REPORT: 02/12/83, DO PASS
2ND READING: 02/15/83 AYES: 49; NAYS: 0
3RD READING: 02/17/83 AYES: 50; NAYS: 0



TRANSMITTED TO HOUSE: 2/17/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/28/83
HEARING: 3/7/83
REPORT: 03/07/83, BE CONCURRED IN
2ND READING: 03/09/83, BE CONCURRED IN AYES: 93; NAYS: 3
3RD READING: 03/10/83, BE CONCURRED IN AYES: 96; NAYS: 2

RETURNED TO SENATE: 3/10/83

TRANSMITTED TO GOVERNOR: 03/18/83
SIGNED: 03/22/83, CHAPTER 162

SB 370 -- ETCHART, GALT, LANE, ET AL. -- TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
BY REQUEST OF: THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 02/05/83
HEARING: 2/18/83
REPORT: 02/18/83, DO PASS, AS AMENDED
2ND READING: 02/21/83 AYES: 50; NAYS: 0
3RD READING: 02/23/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 02/23/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/28/83
HEARING: 3/11/83
REPORT: 03/19/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/22/83, BE CONCURRED IN AYES: 69; NAYS: 0
3RD READING: 03/23/83, BE CONCURRED IN AYES: 95; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/24/83
2ND READING: 03/30/83 AYES: 49; NAYS: 0
3RD READING: 03/31/83 AYES: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/08/83
SIGNED: 04/12/83, CHAPTER 448

SB 371 -- FULLER, MAZUREK, ET AL. -- PROVIDING THAT IF IT IS IN THE BEST INTEREST OF THE CHILD, A CHILD CUSTODY DECREE MAY BE MODIFIED WHEN A CHILD AGED 14 YEARS OR OLDER DESIRES THAT IT BE MODIFIED ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/05/83
HEARING: 2/11/83
REPORT: 02/15/83, DO PASS
2ND READING: 02/17/83 AYES: 47; NAYS: 3
3RD READING: 02/21/83 AYES: 47; NAYS: 3

TRANSMITTED TO HOUSE: 02/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/28/83
HEARING: 3/14/83
REPORT: 03/15/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/21/83, BE CONCURRED IN AYES: 69; NAYS: 1
3RD READING: 03/22/83, BE CONCURRED IN AYES: 91; NAYS: 2

RETURNED TO SENATE WITH AMENDMENTS: 3/23/83
2ND READING: 04/04/83 AYES: 46; NAYS: 0

SENATE BILL NO. 370

INTRODUCED BY ETCHART, GALT, LANE, OCHSNER, ASAY, MANUEL, SPAETH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

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| February 5, 1983 | Introduced and referred to Committee on Agriculture, Livestock and Irrigation. |
| February 7, 1983 | Fiscal Note requested. |
| February 11, 1983 | Fiscal Note returned. |
| February 18, 1983 | Committee recommend bill do pass as amended. Report adopted. |
| | Statement of Intent attached. |
| February 19, 1983 | Bill printed and placed on members' desks. |
| February 21, 1983 | Second reading, do pass. |
| February 22, 1983 | Correctly engrossed. |
| February 23, 1983 | Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House. |

IN THE HOUSE

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| February 28, 1983 | Introduced and referred to Committee on Natural Resources. |
| March 19, 1983 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 22, 1983 | Second reading, concurred in. |
| March 23, 1983 | Third reading, concurred in. |

IN THE SENATE

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| March 24, 1983 | Returned to Senate with amendments. |
| March 30, 1983 | Second reading, amendments concurred in. |
| March 31, 1983 | Third reading, amendments concurred in. |
| | Sent to enrolling. |
| | Reported correctly enrolled. |

SENATE BILL NO. 370

INTRODUCED BY Ethel Lake LAKE

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, ~~declarations,~~ claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, ~~declaration,~~ claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, ~~declarations,~~ claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing ~~declarations with the department~~ or claims of existing rights with a district court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in [section 17]."

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including but not limited to fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under [section 17], for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and

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completed permits, and all change approvals. There shall be no fees for ~~the filing of declarations or for~~ any action taken by the department at the request of the water judge ~~or for the issuance of certificates of existing rights~~.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum ~~yield~~ appropriation of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of





groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the ~~state general fund~~ water right appropriation account established in 85-2-318. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the

applicant in writing within 30 20 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus 1/2 of 1% of the estimated cost over $20 million and up to $100 million; plus 1/4 of 1% of the estimated cost over $100 million and up to $300 million; plus 1/8 of 1% of the estimated cost over $300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an





applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the

department pursuant to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Section 5. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the ~~county clerk and recorder of the county where the point of diversion or place of use is located for recordation~~ person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena. ~~After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.~~





(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 6. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in (1) ~~and (2)~~ through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to ~~10~~ 3 months, the priority date of the application shall be the

date of refiling the application with the corrections with the department. An application not corrected within ~~10~~ 3 months shall be terminated."

Section 7. Section 85-2-303, MCA, is amended to read:

"85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well ~~may do so immediately but~~ shall file a notice of completion or apply for a permit, depending on the maximum ~~yield~~ appropriation of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit."

Section 8. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of





water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects, if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this

section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream, and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after





constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 9. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for ~~3~~ 2 consecutive weeks. Before the last date of publication, the department shall also serve the notice by first-class mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed

appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than ~~30~~ 15 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 10. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) An objection to an application must be filed by the date specified by the department under 85-2-307(2).

(2) The objection must state the name and address of the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the





proposed means of appropriation are inadequate, that the ~~property, water~~ rights~~, or interests~~ of the objector would be adversely affected by the proposed appropriation, ~~or the objector may state any other objections to the proposed appropriation he considers pertinent~~ that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved."

Section 11. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the water rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

Section 12. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department may limit the time for commencement





of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the ~~county clerk and recorder in the county where the point of diversion or place of use is located for recordation~~ permittee, and a copy shall be kept in the office of the department in Helena. ~~After recordation, the clerk and recorder shall send the permit to the permittee.~~

~~(4) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county.~~"

Section 13. Section 85-2-314, MCA, is amended to read:

"85-2-314. Revocation or modification of permit. If the work on an appropriation is not commenced, prosecuted,

or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the ~~county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation~~ permittee, and a duplicate shall be kept in the office of the department in Helena. ~~After recordation, the clerk and recorder shall send the certificate to the appropriator.~~

(2) ~~Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior~~





~~to a general determination under part 2 of this chapter of existing rights in that source.~~ The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation

right from an agricultural or irrigation use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons. If the department determines that the proposed change might adversely affect the water rights of other persons, notice





of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.

(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."

Section 16. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. (1) The right to use water ~~under a permit or certificate of water right~~ shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) The person receiving the appropriation interest shall file with the department notice of the transfer on a

form prescribed by the department, which must include but is not limited to the notarized signatures of the transferor and the transferee.

(3) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2) and hearings shall be held in accordance with 85-2-309. The department shall send an acknowledgment of receipt of a filed transfer to the transferor and the transferee, and a duplicate must be kept in the office of the department in Helena."

NEW SECTION. Section 17. Permit action in highly





appropriated basins or subbasins. (1) The legislature may, by law, preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; or

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 3, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

NEW SECTION. Section 18. Codification instruction. Section 17 is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to section 17.

NEW SECTION. Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.





NEW SECTION. Section 20. Effective date. This act is effective on passage and approval.

-End-

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE SENATE

February 18, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building, at 12:30 p.m. by Chairman Galt.

ROLL CALL: All members present.

DISPOSITION OF SB 316: Senator Aklestad moved to amend the bill as follows: Page 5, line 1, change length of loans from 60 to 30. Motion carried.

Senator Graham moved to amend $150,000 on page 6, line 17 to $250,000. Motion carried.

Senator Boylan moved SB 316, as amended DO PASS. Motion carried.

Senator Kolstad moved to reconsider SB 316 to consider the Statement of Intent. Senator Kolstad moved to adopt the Statement of Intent. Motion carried.

Senator Boylan moved SB 316, as amended, with the Statement of Intent DO PASS. Motion carried.

DISPOSITION OF SB 317: Senator Galt told the committee they had the amendments for the bill in front of them. Exhibit #1.

Senator Kolstad moved to put the Board back with the same limits they had prior to sunsetting. Roll call vote was taken. There were 4 Yes and 4 No. Motion failed on a tie vote.

Senator Kolstad moved to put $24 insurance on non irrigated grain and $48 on irrigated grain.

Senator Graham didn't agree with that motion. He said it was a self help program and you have the Department's own money invested in it. He did not feel raising the amount to $30 was out of line.

Senator Kolstad replied there was no shortage of private insurance companies contributing to state taxes.

Senator Graham said 40% of the premiums were refunded back to local farmers so the money is kept locally and is spent locally. With the other programs, the rest of the money goes out of state. He had never received refunds from private insurance agencies.

Senator Kolstad commented that Montana owned Crop Hail sells the most insurance in Montana as well as the U. S. He was in favor of the amendments. They will still retain the Hail Board.

Senator Graham moved amendment #2, Exhibit #1, regarding coverage for loss of fire.

fers every year needing a water right transfer. Of these, 12,000 will be partial transfers. They are going to need six people to keep records. They have one person in each of their 9 judicial offices. This is their best estimate of what it will cost, according to Judge Lessly.

Senator Boylan, in closing, said they worked on the bill a long time. He thinks the bill is necessary and has to go over to the House. It may have to go into a Free Conference Committee for more work. The need for the bill is because of all the transfers of property going through each year.

DISPOSITION OF SB 401: Senator Conover moved the Clerks and Recorders amendments to SB 401. Exhibit #5. Motion carried.

Senator Conover moved the bill, as amended, DO PASS. Motion carried.

It was asked who will set the fee. One half is statutory to the clerk and recorders and the DNR transfer costs $5, so it should come to around $7 for the filed document. It couldn't be put down because of the over-all disagreement on this by people bringing in the documents. It will be between $7 and $12, according to Judge Lessly.

SENATE BILL 370: Senator Mark Etchart, SD 2, introduced the bill by request of the Department of Natural Resources. He said there was a conflict in section 15 of SB 370 with section 7 of SB 401. Section 7 in 401 may be better than 370, he suggested.

Gary Fritz, DNR, said the area in the Milk River Basin was closed because they were having a time protecting themselves against people coming in and using the water. Mr. Fritz handed out copies explaining the problems in other parts of the bill. Exhibit #7.

Steve Meyer, Montana Association of Conservation Districts, supported the bill. He said it was getting a handle on groundwater withdrawals. However, they would not support the full bill unless section 2 is amended to exclude the cost of adjudicating water rights. Exhibit #8.

Kim Kelly, Montana Water Rights Association, supported Mr. Meyer's testimony as he was also worried about the language in the bill.

Ray Ellis, Montana Water Development Association, agreed with Mr. Meyer's proposal.

John Holter, Montana Farm Bureau, was in agreement with Mr. Meyer. Exhibit #9.

There were no opponents.

Judge Lessly had no objections but suggested in section 2, page

2 and 3 where it reads "in rule making hearings, etc., there shall be no fees, etc.", if this was stricken you would have no question of additional fees.

Mr. Fritz thought the conflict between the two bills would be taken care of with Judge Lessly's amendment.

Senator Conover moved to strike, "but not limited" page 2, line 20 & 21 and reinstate line 4 on page 3. Motion carried.

Mr. Fritz felt there was still a conflict as SB 370 section 16 page 20 and 21 was doing something different to that section of the code. The recordation procedure differs.

Hearing closed on SB 370.

SENATE BILL 233: Senator Graham moved to take SB 233 off the table. Motion carried.

Senator Graham moved SB 233 as amended DO PASS. Roll call vote was taken. There were 4 yes and 4 no votes. Motion failed. The bill will remain in Committee.

DISPOSITION OF SENATE BILL 370: Senator Conover moved the Department amendments. Motion carried.

Senator Kolstad moved to have Anne Brodsky, Committee Researcher, coordinate SB 370 with SB 401. Motion carried.

Senator Kolstad then moved SB 370, as amended DO PASS. Motion carried.

Senator Lee moved to reconsider actions on SB 370 for the purpose of adopting the Statement of Intent. Motion carried.

Senator Lee moved the Statement of Intent for SB 370 and, with Anne Brodsky, Committee Researcher, coordinating the amendments for SB 370 and 401 that SB 370 as amended DO PASS. Motion carried.

SENATE BILL 415: Senator Conover, SD 36, and sponsor of the bill, turned the hearing over to Loren E. Wiesner, Plant and Soil Science Department, Montana State University, Bozeman. He said they would like to have indigenous species in the seed law and change the word "seed processing" to "seed conditioning". Testimony attached as Exhibit #10.

Mr. Wiesner gave the committee copies of the changes in the bill. Exhibit #11. Most of the changes pertained to labeling and conditioning.

There were no opponents.

Senator Conover recommended they be sure to take out oxide daisy.

ROLL CALL

AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-18-83

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| GALT, Jack E. | ✓ | | |
| KOLSTAD, Allen C. | ✓ | | |
| AKLESTAD, Gary C. | ✓ | | |
| OCHSNER, J. Donald | ✓ | | |
| GRAHAM, Carroll | ✓ | | |
| BOYLAN, Paul F. | ✓ | | |
| CONOVER, Max | ✓ | | |
| LANE, Leo | ✓ | | |
| LEE, Gary | ✓ | | |
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| | | | |
| | | | |

Each day attach to minutes.

30

DATE Feb. 18, 1983

COMMITTEE ON Agriculture

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| Les Graham | Dept of Livestock | HB85 | ✓ | |
| Gary Gingery | Dept. of Agric | HB ES | ✓ | |
| W W Lee | Water Court | SB401 | ✓ | |
| John C Chaffin | Water Court | SB401 | ✓ | |
| K. M. Kelly | Mont. Water Develop Assn | SB 370 SB 401 | ✓ | |
| [illegible] | [illegible] | SB 370 SB401 | — | |
| Bill Romine | clerks + Recorders | SB 401 | Amend | |
| Steve Meyer | MACD | SB 370 | amend | |
| Loren Wiesner | Plant and Soil sci. Dept Montstate | SB 415 | ✓ | |
| Dan McIntyre | DNRC | SB401 | | ✓ |
| Bill Asher | APA - PCLA - SCPA | SB401 SB370 | — | — |
| John Watts | Montana Farm Bureau | SB-370 SB401 | ✓ | |
| Kevin Kelly | Dept of Agriculture | SB370 HB85 | ✓ | |
| John Sully | Self | 401 | ✓ | |

(Please leave prepared statement with Secretary)

Ex # 7
2-18-83
Agriculture

601

SENATE BILL 370
TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION: A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO SURFACE AND GROUNDWATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306, THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Senate Bill 370 is a "clean-up" bill drafted by the Department of Natural Resources and Conservation to generally revise, clarify and amend certain water right statutes administered by the Department.

A detailed section by section explanation of the bill has been prepared by the Department and is available. However, the following brief summary of the bill is also being offered.

The bills proposed amendments can be categorized into four separate groups: 1.) Amending Department Duties; 2.) Amending Board Powers & Duties; 3.) Cost and Time Reductions; and 4.) Simplifying, Clarifying and Deleting Unnecessary Language.

Each of the four separate groups can briefly be explained as follows:

1.) Amending Department Duties: This proposed amendment would provide the Department with the authority to adopt rules necessary to reject, modify or condition water use permit applications in highly appropriated basins or subbasins. A rule may only be adopted upon petition signed by a certain percentage of water users in the source of supply, or by direction of the Legislature. It also provides for individual notice to water users and public notice in newspapers of the rulemaking hearing. (Reference: Page 2, Section 1, and Pages 21, 22, & 23, Section 17.)

2.) Amending Board Powers and Duties: This proposed amendment as found on Pages 2 & 3, Section 2 is intended to provide the Board of Natural Resources and Conservation with the authority to adopt through rules, fees to be paid by applicants, petitioners, etc. for the specified services provided by the Department. (It is important to note that the fees that can be set by the Board to recover reasonable administrative costs of acting on water use permit and change applications, has absolutely no connection with fee assessments for water right adjudication "claims" proposed in other bills before this Legislature.)

3.) Cost and Time Reductions: This bill proposes amendments in four separate sections that would save the Department and the state money and time in processing permits and certificates; by deleting recording of the original certificates of water right after court adjudication; by deleting recording of the original permits and certificates after Department verification of the issued water rights; and providing as an alternative to each county, quarterly and annual water right summary reports. An estimated savings of $603,405 could be realized over the life of the adjudication program, and an estimated savings of $10 to $14,000 could be realized in the new appropriations program depending on the number of permits and certificates issued each year. (Reference: Pages 7 & 8, Section 5; Page 16, Section 12; and Pages 17 & 18, Section 14). 601

A savings in processing time of permits is proposed on Pages 8 & 9, Section 6 by reducing the time period from 18 months to 3 months during which an application for water use permit must be corrected and completed to retain the original priority date.

The proposed amendment on Page 12, Section 9 would save one additional week in processing a permit application, and a savings of $7 to $8,000 per year could be realized by eliminating one of the three publications. Also the amendment on Page 13, Section 9 would save another possible two weeks of processing time for water use permit applications.

4.) Simplifying, Clarifying and Deleting Unnecessary Language: This bill would delete unnecessary language on Pages 1 & 2, Section 1, by striking any reference to "declarations" since the law no longer provides for the filing of this type of form; and by deleting language on Page 3, Section 2. This is unnecessary.

An amendment proposed on Page 5, Section 4 would help simplify the Department's decision making process by allowing a more reasonable time in determining if an E.I.S. (Environmental Impact Statement) is necessary on a water use permit or change application before requesting the required E.I.S. fee.

This bill also clarifys the water right law statutes in ten areas as follows:

1.) The word "yield" is deleted and "appropriation" is inserted on Page 3, Section 2 because a water right is based on the beneficial use or appropriation of water from the well and not necessarily the yield of the well.

2.) Page 4, Section 3 contains an amendment that would make this section concerning the water right appropriation account consistent with Section 85-2-319.

3.) The amendment contained on Page 8, line 9, Section 6, would correct this section, which presently omits the reference to subsection (3) of 85-2-306, since it also is exempt from receiving a permit prior to appropriating water or commencing construction of the water project.

4.) The words "may do so immediately but" are deleted from Page 9, Section 7, since the wording is inconsistent with the statutes. The provisions of the permit system must be followed before water can be appropriated for the beneficial use. Also the word "yield" is deleted " and "appropriation" is inserted for the same reason given in 1.) above.



5.) The amendments on Page 11, Section 8 would clarify the priority date of notices of completions for groundwater between January 1, 1962 and July 1, 1973, and the part claims would play in the priority date.

6.) The word "water" is inserted on line 21, Page 14, Section 11 to eliminate some confusion and make it clear that the "rights" referenced here are "water rights."

7.) The word "modify" is inserted in one form or another on Pages 16 and 17, Section 13 to provide the Department with specific authority to "modify" a permit after a show-cause proceeding instead of revoking it.

8.) The words "or irrigation" are inserted on line 1, Page 19, Section 15 to make it clear that irrigation is included in the meaning of agriculture.

9.) The remaining amendments proposed on Pages 19 & 20, Section 15 would first in subsection (6) move this subsection in its entirety from Section 85-2-403(3), since the subject matter more closely relates and eliminates confusion created by its previous placement.

Secondly, subsection (7) would make the change approval section consistent with permit statutes concerning mailing and duplication of the change approval.

Thirdly, Subsection (6) would clarify and provide for the filing of an application to change pursuant to this section on issued but unperfected permits or change authorizations. Presently the law is unclear on this subject, but the amendment is just and necessary and would save applicants time and money in processing applications.

10.) The words "under a permit or certificate of water right" would be deleted from Page 20, Section 16 to make it clear that this subsection applies to all valid water rights.

The amendment to Page 21, Section 16 subsection (2) would clarify the notarization of the transfer form.

The deletion shown is subsection (3), Page 21, Section 16 is moved to Section 15 of this bill, since it properly belongs in that section. The added language to this subsection (3), Page 21, clarifies how the transfer form will be handled after being received by the Department.

Montana Association Of Conservation Districts

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

February 18, 1983

Mr. Chairman, Members of the Committee:

I am Steve Meyer representing the Montana Association of Conservation Districts.

We would like to go on the record as being in qualified support of SB 370. We feel that it is important for the state to get a handle on the groundwater withdrawals. We don't want to find ourselves in a situation like that found in the plains region over the Ogallalla aquifer. We also need some mechanism for limiting new appropriations in highly appropriated basins. We have a problem with Section 2 of this bill. The changes starting on line 21, page 2 through line 4, page 3, appears to give the Department, with approval of the Board, authority to charge fees for the completion of and issuance of certificates of water rights. We have stated before, the state set a one time fee for adjudicating the state's water rights. We are entirely opposed to any attempts to charge those water users that filed water rights claims at the request of the state any more fees.

We will not be able to give our support to the full bill, unless section 2 is amended to exclude the cost of adjudicating water rights.

Thank you.

Steven R. Meyer

SRM:dv

25

NAME: John Holtes DATE: 15 Feb 83

ADDRESS: Bozeman

PHONE:

REPRESENTING WHOM? Montana Farm Bureau Federation

APPEARING ON WHICH PROPOSAL: SB-370

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: Mr Chairman,
The MFBF agrees with the intent of SB-370 except for Section Two. Please report a DO PASS with Section 2 amended.

John Holtes
Montana Farm
Bureau Federation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 18 19 83

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration SENATE Bill No. 370

Respectfully report as follows: That SENATE Bill No. 370

introduced bill, be amended as follows:

1. Page 2, line 20 and 21.
Strike: "but not limited to"

2. Page 3, line 4.
Following: "~~rights~~"
Insert: "or for the issuance of certificates of existing rights"

3. Page 20, line 18.
Strike: "(1)"

4. Page 20, line 24.
Strike: subsection (2) in its entirety

5. Page 21, line 4.
Strike: "(3)"

~~XXXXXX~~
~~DO PASS~~

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

N.C.

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February 18 19 83

6. Page 21, line 21.
Following: "65-2-309"
Strike: remainder of line 21 through "Helena." on line 24

7. Page 23, line 3.
Following: "chapter"
Strike: "3"
Insert: "4"

**And, as so amended,**
**DO PASS**

Jack E. Galt, Chairman.

STATE PUB. CO.
Helena, Mont.

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# STANDING COMMITTEE REPORT

February 18 19 83

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration STATEMENT OF INTENT SENATE Bill No. 370

Respectfully report as follows: That STATEMENT OF INTENT SENATE Bill No. 370 be adopted.

STATEMENT OF INTENT RE: SB 370

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Natural Resources and Conservation in sections 1 and 17.

The intent is to provide the Department with the authority to adopt rules necessary to reject, modify, or condition water use permit applications in highly appropriated basins or subbasins. A rule may only be adopted under this section upon a petition signed by a certain percentage of water users in the source of supply or by direction of the Legislature. The petition must allege certain facts showing the need for the adoption of a rule. The Department must act on the petition within 60 days by: denying the petition and providing reasons to the petitioners; informing the petitioners that additional study of the allegations is necessary before denying or proceeding with the petition; or initiating the rulemaking proceeding.

XXXXXXX

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

2.18.83

February 16 19 83

The rulemaking procedure must follow the notice requirements of the Montana Administrative Procedure Act and in addition the Department must publish notice of the rulemaking hearing once a week for three successive weeks in a newspaper of general circulation in which the source is located, and also serve an individual copy of the notice on any known water right holder in the source of supply according to the Department's records.

This bill also delegates rulemaking authority to the Board of Natural Resources and Conservation in section 2.

The intent is to provide the Board with the authority to adopt, through rules, fees to be paid by applicants, petitioners, and others for services provided. Fees could be adopted for: rulemaking hearings to reject, modify, or condition water use permit applications in highly appropriated basins or subbasins; administrative hearings conducted by the Department to settle objections to permit or change applications; costs incurred during the field investigation of a complaint against a permittee and related revocation proceedings; and for costs incurred in the field verification of issued and completed permits and change approvals.

First adopted by the Senate Agriculture, Livestock & Irrigation Committee on the 18th day of February, 1983.

Jack E. Galt, Chairman.

STATE PUB. CO.
Helena, Mont.

NATURAL RESOURCES COMMITTEE MINUTES
March 11, 1983

The House Natural Resources Committee convened on March 11, 1983, at 12:30 p.m., in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Reps. Asay, Bertelsen, Nordtvedt, Quilici, and Veleber, who were excused, and Reps. Fagg and Neuman, who were absent. Chairman Harper opened the meeting to a hearing on SB 370.

## SENATE BILL 370

SENATOR MARK ETCHART, District 2, chief sponsor, said the bill revises and clarifies certain laws relating to surface and ground water. He said it is a companion bill to SB 199 which this committee in its great wisdom passed in the last session. That bill was specifically for the Milk River and authorized the Department of Natural Resources to adopt rules that would reject permit applications or modify other applications because of over appropriation. He said it worked well in the Milk River drainage and so he was requested to carry this bill that would enlarge it to other drainages that have similar problems. He said he asked for a few changes as he was afraid to give the department the power to just pick drainages to shut down appropriations in. He said on page 22, lines 7 to 10, requires local input and a request to the department before this can happen. He said another provision of the bill which was worked on in the Senate streamlines the reporting of the water rights. This is on page 8, lines 4 to 8. He projected $905,000 could be saved with this over the life of the water adjudication.

GARY FRITZ, Water Resources Division, Department of Natural Resources and Conservation, said the bill is a clean-up bill requested by them. A copy of testimony on the bill in Exhibit 1 of the minutes. He said he would be glad to answer any questions.

STEVE MEYER, Montana Association of Conservation Districts, spoke next in support.

RON MARCOUX, Fish, Wildlife, and Parks Department, asked that on page 14, line 4, the struck words "property" and "or interests" be reinserted. He said there are very few water rights for the protection of wildlife. He said in the past they have used the provision on line 4 to enter into the hearing process. He said it has been valuable in their working with the individual making the water request change. It helps them make sure there is an adequate flow to protect the spawning streams as they can work with individuals to prevent serious dewatering of that stream.

SENATOR ETCHART in closing said he had conferred with Mr. F on the Fish, Wildlife, and Parks amendment and they would p it to remain as it is now in the bill. He said the DNRC wa to deal only with water rights and not get involved with ot interests.

Questions were asked by the committee.

Rep. Mueller asked Mr. Fritz concerning the Fish, Wildlife Parks suggested amendment. Mr. Fritz said the reason they it important to take out that language was that it enabled to object on other interests besides water rights and he fe these were matters they shouldn't get into. He said they d end up settling water property rights now. He said if the Wildlife and Game have a water right claim in the name of t public specifically for that region that is different.

Rep. Harper asked Mr. Marcoux to give a specific example. Marcoux said there is a small hydro power project proposed spawning stream that goes into Libby. He said if they don' have a water right or the interest given by the language re by this bill, the only way they can enter into the process to send a letter to the applicant and the DNRC to say they concerned. He said there is no legal reason why the letter be read. He said in the past they have had success in this and they don't want to jeopardize that work.

Rep. Curtiss asked if Judge Leslie had taken a position on t The response was that he was very much in support of the pro vision.

Rep. Ream asked if we aren't eliminating the public interest teria by taking this water interest right out. Mr. Fritz sa there is no public interest criteria on the books at this ti He said it wasn't their purpose in suggesting this change to freeze out the ability to effectually use the stream flows b to try to get away from the department being an arbitrator i easements and special interests.

Rep. Addy asked if people frozen out wouldn't end up in the and wouldn't the Department end up with more court cases. M Fritz said if the issue is a water right they do but not if p perty rights. He added that if the proposal goes through th Fish, Wildlife and Parks Department would still negotiate wi the water right applicant but they would not have as much le erage as they do now to work something out.

Chairman Harper closed the hearing on this bill and opened the hearing on SB 56.

SENATE BILL 56

SENATOR TOM HAGER, District 39, chief sponsor, said the reason for this bill is to set up a fee system to be paid by persons generating hazardous wastes in the state. He said it arose from the 1979-80 PCB spill in Billings when we witnessed the inability of the federal government to handle the situation. He said in 1981 he sponsored legislation to put the control of this program in the hands of the state which is much preferred as the federal government in Washington has problems keeping track of what is happening in Montana. He said what this bill does is share the funding on a three to one match. This bill sets up a fee system to collect up to 40 percent of the dollars needed for the program. Small users, like farmers, are exempted from the charge. He said he had 9 or 10 letters from major generators favoring the bill. He said he had talked with some industry leaders who assured him that they favor a fair fee system and they have seen the proposed schedule and have agreed to it.

DUANE ROBERTSON, Occupational Health Bureau, Health and Environmental Sciences Department, spoke in support and a copy of his testimony is Exhibit 2 of the minutes.

CARL RIECKMANN, Montana Petroleum Association, said they support the bill.

DAWN NORTH, League of Women Voters, said they believe in a state run hazardous waste program. A copy of her testimony is Exhibit 3.

LUCIANNE BRIEGER, Montana Environmental Information Center, said they support the bill.

MARC LEDBETTER, Northern Plains Resource Council, said they support the bill.

JOAN MILES, Lewis and Clark Health Department, said they support the bill.

REPRESENTATIVE BOB REAM, District 93, said he was a proponent of the bill. He said the House has passed HB 200 which he sponsors for hazardous waste cleanup. He said he believes that prevention is better than cleanup after the fact.

SENATOR HAGER closed.

MEMORANDUM

TO: HOUSE NATURAL RESOURCES COMMITTEE MEMBERS

FROM: JOHN CARTER

RE: BILL SUMMARIES for SBs 56, 370, 441

DATE: March 11, 1983

SB 56
Hager

This bill seeks to authorize the Health and Environmental Sciences Department to adopt rules setting fees to be paid by persons generating hazardous wastes in the state.

SB 370
Etchart

This bill seeks to generally revise existing code sections relating to the appropriation of surface and ground water. Among other things, the bill would:

- authorize the Department of Natural Resources and Conservation (DNRC) to adopt rules providing for the rejection of permit applications and the modification and conditioning of permits in highly appropriated water basins;

- expand the authority of the DNRC to prescribe fees for services rendered by the department regarding water appropriations;

- provide for the deposit of fees and penalties collected under the water appropriation laws to be deposited in the water rights appropriation account and not the general fund;

- expand the time limitation on the requirement that the department notify applicants of the need for an environmental impact statement from 30 to 90 days following receipt of a completed application;

- authorize the DNRC to modify (the department may now only revoke) a water appropriation permit under certain circumstances; and

- prohibit the severance of a water right from the land to which it is appurtenant unless approval is received from the department after it is determined that the severance will not adversely affect other persons.

SB 441
Tveit

This bill seeks to require oil and gas producers to provide royalty owners with a written statement each time a payment is made that sets out certain information pertaining to production and royalties earned.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL SB 370 DATE 3/11/83

SPONSOR SENATOR ETCHART

| NAME | RESIDENCE | REPRESENTING | SUP-PORT | OP-POSE |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33
1-83

Ex. 1

SENATE BILL 370
TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION: A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO SURFACE AND GROUNDWATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306, THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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Senate Bill 370 is a "clean-up" bill drafted by the Department of Natural Resources and Conservation to generally revise, clarify and amend certain water right statutes administered by the Department.

A detailed section by section explanation of the bill has been prepared by the Department and is available. However, the following brief summary of the bill is also being offered.

The bills proposed amendments can be categorized into four separate groups: 1.) Amending Department Duties; 2.) Amending Board Powers & Duties; 3.) Cost and Time Reductions; and 4.) Simplifying, Clarifying and Deleting Unnecessary Language.

Each of the four separate groups can briefly be explained as follows:

1.) Amending Department Duties: This proposed amendment would provide the Department with the authority to adopt rules necessary to reject, modify or condition water use permit applications in highly appropriated basins or subbasins. A rule may only be adopted upon petition signed by a certain percentage of water users in the source of supply, or by direction of the Legislature. It also provides for individual notice to water users and public notice in newspapers of the rulemaking hearing. (Reference: Page 2, Section 1, and Pages 21, 22, & 23, Section 17.)

2.) Amending Board Powers and Duties: This proposed amendment as found on Pages 2 & 3, Section 2 is intended to provide the Board of Natural Resources and Conservation with the authority to adopt through rules, fees to be paid by applicants, petitioners, etc. for the specified services provided by the Department. (It is important to note that the fees that can be set by the Board to recover reasonable administrative costs of acting on water use permit and change applications, has absolutely no connection with fee assessments for water right adjudication "claims" proposed in other bills before this Legislature.)

3.) Cost and Time Reductions: This bill proposes amendments in four separate sections that would save the Department and the state money and time in processing permits and certificates; by deleting recording of the original certificates of water right after court adjudication; by deleting recording of the original permits and certificates after Department verification of the issued water rights; and providing as an alternative to each county, quarterly and annual water right summary reports. An estimated savings of $603,495 could be realized over the life of the adjudication program, and an estimated savings of $10 to $14,000 could be realized in the new appropriations program depending on the number of permits and certificates issued each year. (Reference: Pages 7 & 8, Section 5; Page 16, Section 12; and Pages 17 & 18, Section 14).

A savings in processing time of permits is proposed on Pages 8 & 9, Section 6 by reducing the time period from 18 months to 3 months during which an application for water use permit must be corrected and completed to retain the original priority date.

The proposed amendment on Page 12, Section 9 would save one additional week in processing a permit application, and a savings of $7 to $8,000 per year could be realized by eliminating one of the three publications. Also the amendment on Page 13, Section 9 would save another possible two weeks of processing time for water use permit applications.

4.) Simplifying, Clarifying and Deleting Unnecessary Language: This bill would delete unnecessary language on Pages 1 & 2, Section 1, by striking any reference to "declarations" since the law no longer provides for the filing of this type of form; and by deleting language on Page 3, Section 2. This is unnecessary.

An amendment proposed on Page 5, Section 4 would help simplify the Department's decision making process by allowing a more reasonable time in determining if an E.I.S. (Environmental Impact Statement) is necessary on a water use permit or change application before requesting the required E.I.S. fee.

This bill also clarifys the water right law statutes in ten areas as follows:

1.) The word "yield" is deleted and "appropriation" is inserted on Page 3, Section 2 because a water right is based on the beneficial use or appropriation of water from the well and not necessarily the yield of the well.

2.) Page 4, Section 3 contains an amendment that would make this section concerning the water right appropriation account consistent with Section 85-2-318.

3.) The amendment contained on Page 8, line 9, Section 6, would correct this section, which presently omits the reference to subsection (3) of 85-2-306, since it also is exempt from receiving a permit prior to appropriating water or commencing construction of the water project.

4.) The words "may do so immediately but" are deleted from Page 9, Section 7, since the wording is inconsistent with the statutes. The provisions of the permit system must be followed before water can be appropriated for the beneficial use. Also the word "yield" is deleted " and "appropriation" is inserted for the same reason given in 1.) above.

5.) The amendments on Page 11, Section 8 would clarify the priority date of notices of completions for groundwater between January 1, 1962 and July 1, 1973, and the part claims would play in the priority date.

6.) The word "water" is inserted on line 21, Page 14, Section 11 to eliminate some confusion and make it clear that the "rights" referenced here are "water rights."

7.) The word "modify" is inserted in one form or another on Pages 16 and 17, Section 13 to provide the Department with specific authority to "modify" a permit after a show-cause proceeding instead of revoking it.

8.) The words "or irrigation" are inserted on line 1, Page 19, Section 15 to make it clear that irrigation is included in the meaning of agriculture.

9.) The remaining amendments proposed on Pages 19 & 20, Section 15 would first in subsection (6) move this subsection in its entirety from Section 85-2-403(3), since the subject matter more closely relates and eliminates confusion created by its previous placement.

Secondly, subsection (7) would make the change approval section consistent with permit statutes concerning mailing and duplication of the change approval.

Thirdly, Subsection (6) would clarify and provide for the filing of an application to change pursuant to this section on issued but unperfected permits or change authorizations. Presently the law is unclear on this subject, but the amendment is just and necessary and would save applicants time and money in processing applications.

10.) The words "under a permit or certificate of water right" would be deleted from Page 20, Section 16 to make it clear that this subsection applies to all valid water rights.

The amendment to Page 21, Section 16 subsection (2) would clarify the notarization of the transfer form.

The deletion shown is subsection (3), Page 21, Section 16 is moved to Section 15 of this bill, since it properly belongs in that section. The added language to this subsection (3), Page 21, clarifies how the transfer form will be handled after being received by the Department.

# STANDING COMMITTEE REPORT

March 18, 19 83

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 370

third reading copy ( blue color )

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 370

be amended as follows:

1. Page 14, line 3.
Following: "the"
Insert: "property,"

2. Page 14, line 4.
Following: "rights"
Insert: ", or interests"

AS AMENDED
BE CONCURRED IN

~~DO PASS~~

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

39

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
March 18, 1983

The House Natural Resources Committee convened at 12:30 p.m., March 18, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Quilici, excused, and Nordtvedt, absent. Chairman Harper opened the meeting to a hearing on HB 903.

## HOUSE BILL 903

REPRESENTATIVE HARRISON FAGG, District 63, chief sponsor, said the bill is to appropriate funds to the State Lands Department to rectify environmental impacts caused by mining in the Stillwater-Boulder River complex. He said the RIT funds should be used. He said this is one of the most beautiful areas in Montana and it has been scarred in the past by mining. Rep. Fagg showed some slides to indicate this. Rep. Fagg said there has been a substantial effort to do some reclamation work but it is a big job and a lot of the damage was done before the Anaconda Company came.

MARC LEDBETTER, Northern Plains Resource Council, spoke in support. He said a lot of ranchers from that area belong to their organization. Mr. Ledbetter said they had visited the area and after seeing the kind of damage that had occurred, they became involved in seeing what could be done to see that this doesn't happen again as well as to reclaim. He said there is extensive damage, much of which does not show up on slides like old tailing ponds polluting ground water and roads going up steep mountain sides that are now a public hazard. He said while a lot can't be cleaned up, a certain amount can be. He said the RIT fund was set up for this specific purpose and there is no more proper use of the money. Mr. Ledbetter said we should also look very seriously at the Hardrock Reclamation Act to see that this type of thing will never occur again. He said the Act is in a state where a lot of this couldn't happen again. Mr. Ledbetter said that mining companies have been helpful in cleaning up areas they have not been responsible for.

KEN KNUDSON, Montana Wildlife Federation, spoke in support. He said the Stillwater was one of the first wildlife areas of the state. He said this is an excellent place to spend some of the RIT funds. He said it is close to Billings, which is a good-sized urban area. He said there is information available on the McLaren Mines and areas impacted. He said this had been worked on by the Fish, Wildlife and Parks Department when he was with them. He said this would be taking the next step - getting the funds to go ahead with some of the reclamation work.

Senator Towe passed for the committee's perusal a copy of a memo prepared by Luci Brieger, MEIC, detailing the requirements for public review of public land disposal projects. A copy of this is Exhibit 1 of the minutes. He highlighted different points of this memo for the committee. He said areas he understands that are considered for sale in the Forest Service area are the entire Crazy Mountain area, the back side of Lone Mountain and all the Little Snowy area. Senator Towe said this is just a beginning. He said we just don't know what will happen.

Senator Towe said it is his contention that this bill is just as important knowing these facts as when he first introduced it. He said he would like to change a couple of things that might allay some fears and reduce some of the potential burden on the state which is to amend on page 1, line 22, after "hearing" to insert "or public meeting". Senator Towe said three things would have to occur now before the state would hold a hearing and these are: the Commissioner would determine the sale would have an adverse impact on the state; the Commissioner would determine the federal agency was not going to hold a hearing; and the commissioner would determine that further input would be desireable. Senator Towe said with the Commissioner held responsible and required to ask the federal agency to hold a hearing, it will be held. The hearings held by the state therefore, will be few but it is important to give the Commissioner that discretion. Senator Towe said a staff person could be assigned to watch over this and it should take only part of his time.

Senator Towe said he had written to Mr. Buford and had received an answer from James Parker, Acting Director, United States Department of Interior and copies were distributed to the members. A copy is Exhibit 2 of the minutes.

Rep. Ream asked if Dennis Hemmer, Commissioner of State Lands had any comment to make. Rep. Ream asked if this would give the Department more flexibility. Mr. Hemmer said yes, and they will do it if it is the wish of the Legislature; however, they will need sufficient staff and money to do it.

Chairman Harper asked if the federal government might try to pass this obligation on to the state. Senator Towe said he didn't think the federal government would refuse the governor's request to hold a public hearing especially if it came through statutory authority such as this bill would provide.

SENATE BILL 370 Rep. Mueller asked Jim Flyn, Director of Fish, Wildlife and Parks, about page 14, lines 3 and 4, which at the hearing seemed a problem to the department. Mr. Flynn said he didn't really care to comment

but under the present process even where the department does not have an actual water right they can still speak to a negative impact on fish or wildlife.

Rep. Ream expressed a concern that this would also affect private property owners.

John Carter was asked for an opinion and said it would have the same effect on the private individuals as on the department.

Rep. Ream asked of the possibility of eliminating section 10 from the bill and leave the law as it is now.

Rep. Mueller said he would resist that as it would gut the very thing the bill is trying to do.

Rep. Ream said he didn't quite follow that as section 10 just deals with filing an objection. Rep. Mueller said since this just deals with water rights it takes out property rights.

John Carter was asked for an opinion and said it isn't really a legal interpretation but by deleting the interest of property owners from this section it may have adverse impacts, and the reason is that water rights do have effects on other property rights and it is hard to separate the two.

Chairman Harper said how about reinstating "property" and "or interests". Would this be removing the nuisance provision?

Rep. Iverson moved to reinsert these words. He said he could see a problem for if an upstream landholder would have no right to object on the basis of anything and the water could be going through his yard. He felt the right to protect property rights should be reinserted.

This motion carried unanimously with all present (absent were Reps. Fagg, Veleber and Quilici).

Rep. Jensen moved SB 370 AS AMENDED BE CONCURRED IN and this motion carried unanimously with all present. Same absent as previous vote.

SENATE BILL 41 Rep. Mueller moved that the bill be TABLED. This motion carried unanimously with all present. (absent were Reps. Fagg and Veleber and Quilici).

HOUSE BILL 903 Rep. Mueller moved DO PASS.
Rep. Brown asked if the intent is to try to get some federal matching money.
Rep. Ream asked if the federal government had any money to apply on the federal land affected. Rep. Mueller said as

STATEMENT OF INTENT

SENATE BILL 370

Senate Agriculture, Livestock and Irrigation Committee

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Natural Resources and Conservation in sections 1 and 17.

The intent is to provide the Department with the authority to adopt rules necessary to reject, modify, or condition water use permit applications in highly appropriated basins or subbasins. A rule may only be adopted under this section upon a petition signed by a certain percentage of water users in the source of supply or by direction of the Legislature. The petition must allege certain facts showing the need for the adoption of a rule. The Department must act on the petition within 60 days by: denying the petition and providing reasons to the petitioners; informing the petitioners that additional study of the allegations is necessary before denying or proceeding with the petition; or initiating the rulemaking proceeding. The rulemaking procedure must follow the notice requirements of the Montana Administrative Procedure Act and in addition the Department must publish notice of the rulemaking hearing once a week for three successive weeks in a newspaper of general circulation in which the source is located, and also



serve an individual copy of the notice on any known water right holder in the source of supply according to the Department's records.

This bill also delegates rulemaking authority to the Board of Natural Resources and Conservation in section 2.

The intent is to provide the Board with the authority to adopt, through rules, fees to be paid by applicants, petitioners, and others for services provided. Fees could be adopted for: rulemaking hearings to reject, modify, or condition water use permit applications in highly appropriated basins or subbasins; administrative hearings conducted by the Department to settle objections to permit or change applications; costs incurred during the field investigation of a complaint against a permittee and related revocation proceedings; and for costs incurred in the field verification of issued and completed permits and change approvals.



REFERENCE BILL

SB 370

SENATE BILL NO. 370

INTRODUCED BY ETCHART, GALT, LANE, OCHSNER, ASAY, MANUEL, SPAETH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, ~~declarations~~, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, ~~declaration~~, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, ~~declarations~~, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing ~~declarations with the department~~ or claims of existing rights with a district court under this chapter;

~~(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in [section 17]~~."

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including ~~but not limited to~~ fees for the filing of applications or for the issuance of permits and certificates~~, for rulemaking hearings under [section 17], for administrative hearings conducted under this chapter, for investigations concerning~~



REFERENCE BILL

permit--revocation,--for--field--verification--of-issued-and completed-permits,-and-all-change-approvals. There shall be no fees for ~~the--filing-of-declarations-or-for~~ any action taken by the department at the request of the water judge ~~or for-the-issuance-of-certificates-of-existing-rights~~ OR FOR THE ISSUANCE OF CERTIFICATES OF EXISTING RIGHTS.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum ~~yield~~ appropriation of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and





(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the ~~state-general-fund~~ water right appropriation account established in 85-2-318. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second

of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within ~~30~~ 90 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus 1/2 of 1% of the estimated cost over $20 million and up to $100 million; plus 1/4 of 1% of the estimated cost over $100 million and up to $300 million; plus 1/8 of 1% of the estimated cost over $300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of





computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the

appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(5) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Section 5. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the ~~county clerk and recorder of the county where the point of diversion or place of use is located for recordation~~ person to whom the right is decreed. The department shall keep a copy of the certificate





in its office in Helena. ~~After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.~~

~~(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~"

Section 6. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in (1) ~~and (2)~~ through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or

within a further time as the department allows, up to ~~10~~ 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within ~~10~~ 3 months shall be terminated."

Section 7. Section 85-2-303, MCA, is amended to read:

"85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well ~~may do so immediately but~~ shall file a notice of completion or apply for a permit, depending on the maximum ~~yield~~ appropriation of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit."

Section 8. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and





recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects, if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April

14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream, and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically





has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 9. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for ~~3~~ 2 consecutive weeks. Before the last date of publication, the department shall also serve the notice by first-class mail upon an appropriator of water or applicant

for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than ~~30~~ 15 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 10. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) An objection to an application must be filed by the date specified by the department under 85-2-307(2).

(2) The objection must state the name and address of





the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, PROPERTY, water rights~~, or interests~~, OR INTERESTS of the objector would be adversely affected by the proposed appropriation, ~~or the objector may state any other objections to the proposed appropriation he considers pertinent~~ that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved."

Section 11. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the water rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, construction, and

operation of the appropriation works are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

Section 12. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights





made under this chapter.

(2) The department may limit the time for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the ~~county clerk and recorder in the county where the point of diversion or place of use is located for recordation~~ permittee, and a copy shall be kept in the office of the department in Helena. ~~After recordation, the clerk and recorder shall send the permit to the permittee.~~

~~(4) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county.~~"

Section 13. Section 85-2-314, MCA, is amended to read:

"85-2-314. Revocation ~~or modification~~ of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be ~~modified or~~ revoked. If the permittee fails to show sufficient cause, the department may ~~modify or~~ revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the ~~county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation~~ ~~permittee~~, and a duplicate shall be kept in the office of the department in Helena. ~~After recordation, the clerk and recorder shall send the certificate to the appropriator.~~





~~(2) Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior to a general determination under part 2 of this chapter of existing rights in that source.~~ ~~The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~"

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural ~~or irrigation~~ use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other approoriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons.~~





~~If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.~~

~~(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.~~"

Section 16. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. ~~(1)~~ The right to use water ~~under a permit or certificate of water right~~ shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

~~(2)--The-person-receiving--the--appropriation--interest shall--file--with-the-department-notice-of-the-transfer-on-a form-prescribed-by-the-department~~, ~~which-must-include-but-is not-limited-to-the-notarized-signatures--of--the--transferor and-the-transferee~~.

~~(3)--Without---obtaining---prior---approval---from--the department~~, ~~an-appropriator-may-not-sever-all-or-any-part-of an--appropriation--right--from--the--land--to--which--it--is appurtenant~~, ~~sell-the-appropriation-right-for-other-purposes or---to---other--lands~~, ~~--or--make--the--appropriation--right appurtenant-to-other-lands~~. ~~The-department-shall-approve-the proposed-change-if-it-determines-that--the--proposed--change will--not--adversely--affect-the-rights-of-other-persons~~. ~~If the-department-determines-that--the--proposed--change--might adversely--affect-the-rights-of-other-persons~~, ~~notice-of-the proposed-change-shall-be-given-in-accordance-with--85-2-307~~. ~~If-the-department-then-determines-that-an-objection-filed-by a--person--whose--rights--may--be--affected--states--a-valid objection-to-the-proposed-change~~, ~~the-department-shall--hold a--hearing--thereon--prior--to-its-approval-or-denial-of-the proposed-change~~. ~~--Objections-shall-meet-the-requirements--of 85-2-308(2)--and--hearings--shall-be-held-in-accordance-with 85-2-309~~. ~~The-department-shall--send--an--acknowledgment--of receipt--of--a--filed--transfer--to--the--transferor-and-the transferee~~, ~~and-a-duplicate-must-be-kept-in--the--office--of the-department-in-Helena~~."





NEW SECTION. Section 17. Permit action in highly appropriated basins or subbasins. (1) The legislature may, by law, preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; or

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must

study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 3 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

NEW SECTION. Section 18. Codification instruction. Section 17 is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to section 17.

NEW SECTION. Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains





in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 20. Effective date. This act is effective on passage and approval.

-End-